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No. 06-360

In The

Supreme Court of the United States

ANTHONY G. VASEK,

Petitioner,

v.

MT. SAN JACINTO COLLEGE DISTRICT et al.,

Respondents.

On Petition For A Writ Of Certiorari
To The California Court Of Appeal
Fourth Appellate District, Division Two

REPLY TO DISTRICT RESPONDENTS' OPPOSITION

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PETITIONER'S RESPONSES TO DISTRICT RESPONDENTS' FLAWED ARGUMENTS

Three separate oppositions to the instant petition were filed by Respondent Keenan, Respondent Mason, and District Respondents. Because of the overlapping nature of respondents' arguments, the discussion of some of the points raised by District Respondents' opposition may appear in Petitioner's replies to the two other oppositions.

I. Petitioner cannot be required to ascertain *clairvoyantly* whether the appellate opinion was complete as filed.

Petitioner is a man of science. He does not indulge in speculation. He is trained to rely solely on facts. The opinion in his possession indicated that an entire section had been omitted. It goes beyond the pale of reason to insist, as District Respondents do (*cf.*, District's Opp., p. 6), that Petitioner should have been able to deduce clairvoyantly that the appellate court's opinion was complete as filed even though an entire section of the opinion was shown to be missing. The appellate court clarified the matter belatedly. Every reasonable person will agree that the full content of the initial appellate court's decision was not communicated definitively to Petitioner until months after he was required to file trial court papers under deadline.

II. The absence of certain defendants from the case precluded Petitioner from conducting full discovery, thereby making it impossible for him to allege more specific facts no matter how many opportunities might be given him to perfect his complaint.

On page 10 of their opposition, District Respondents complain that Petitioner's 8th amended complaint "contained

many broad allegations, along with conclusory allegations of conspiracy." However, the trial court's exclusion of many District Defendants from the case precluded Petitioner from conducting full discovery, thereby making it impossible for him to allege more specific facts no matter how many opportunities might be given him to perfect his complaint.

In each of his complaints, Petitioner had repeatedly stated "that what is known of said conspiracy today represents only 'the tip of the iceberg,' and that the full extent of said conspiracy is yet to be discovered." (Paragraph 156 of Petitioner's 8th amended complaint.) To get to the bottom of it all, Petitioner needed to have the full complement of District Defendants included in the trial court proceedings on remand.

Indeed, since the time the dismissals were entered in this case, Petitioner has found out, quite by accident, that District had stripped him of some 10 years of teaching credit without his consent or knowledge. This occurred at the time District brought the more than 40 trumped-up charges of dismissal against him. The resulting impact is that Petitioner was shortchanged by thousands of dollars each year for more than 10 years. In the meantime, all recently graduated doctorates on the faculty have surpassed Petitioner on the salary schedule. When confronted by Petitioner at a meeting had on November 20, 2006, District Respondent bulked at placing Petitioner where he belongs on the salary schedule. Had Petitioner been able to depose certain of the "missing" defendants, he would have been able to discover and allege this "continuing" violation.

III. There is incontrovertible evidence that sanctions were imposed upon Petitioner for his having insisted that the "missing" defendants belonged in the case and for his having included them in his 8th amended complaint.

Early in the trial court proceedings, Respondent Mason had served upon Petitioner a deposition notice which Petitioner refused to honor on the grounds that said notice had not been served upon the "missing" parties, and that failure to do so compromised Petitioner's ability to preserve his right to limit his exposure to depositions as provided by California Code of Civil Procedure §2025(t). (1 E033583 CT 259-273.) In her declaration supporting her motion to compel, Mason's attorney made statements known by Petitioner to be false. So, at the hearing of said motion, noting that Mason's attorney had declared, under oath, that she had personal knowledge of each of the facts set forth in her declaration *and could competently testify thereto*, Petitioner sought to conduct a direct examination of Mason's attorney on matters contained in her declaration and motion.

The trial court, however, would have none of that. Abruptly interrupting Petitioner, the trial court pronounced Petitioner's arguments regarding the need to restore the "disenfranchised" parties "silly" and imposed sanctions of $750 on Petitioner for "taking up the Court's time with such arguments." (E033583 RT 39-40.)

> "Sir, the way you attack the declaration is not to come here to this hearing and attack it verbally *with a series of statements orally unsworn in court* to do it. That is not the way these matters are handled. If you want to practice law, sir, you're going to be held to the same standards as lawyers. This hearing is concluded. Thank you." (E033583 RT 41, lines 9-14; emphasis is added.)

But in fact, Petitioner had planned to attack counsel's declaration *by her own orally sworn statements* in open court; and Petitioner's opposition had clearly stated that that was what he planned to do: "At the hearing of this motion to

compel, Vasek will present oral testimony (by Ms. Roberts and others) which will establish her propensity to misrepresent the facts to Vasek and to this Court." (1 E033583 CT 265, lines 1-3.)

In a subsequent hearing on Mason's demurrer to Petitioner's 3rd amended complaint, Petitioner again attempted to set the record straight with regard to falsehoods stated by Mason's attorney in her reply to Petitioner's opposition and reiterated by her during the hearing. (3 E033583 CT 649, line 21 to 3 E033583 CT 650, line 12.) Abruptly interrupting Petitioner, the trial court alluded to "the falicy [sic] [Petitioner] espoused" without making clear precisely what the court was referring to. The trial court then continued with vague and unspecified references to "problems that historically beset this case."

"I've read enough of this file to see the repetitive motif in these proceedings," the trial court said, without identifying what the court had read or what precisely the court saw as "the repetitive motif." Warning Petitioner not to "go off on a philosophical tangent that you created that has nothing to do with the legal framework of this case," the trial court threatened Petitioner with "sanctions of true substance" for "work you made attorneys do with responding to documents you should not file." The trial court never made clear to Petitioner how Petitioner was to determine which "documents [he] should not file" in order to avoid the imposition of sanctions and still be able to exercise his right to protect and pursue his interests in the litigation. (3 E033583 CT 650-651.)

The trial court later imposed additional sanctions totaling $1400, making it clear that it was doing so "pursuant to CCP section 128.5 because [Petitioner's] conduct in amending the complaint *as to defendants other than Grosz and Hartley* is frivolous and in bad faith." (E033583 RT 107,

lines 15-17.) Thus, District Respondents' statement, on page 9 of their opposition, that "the trial court did not impose monetary sanctions on Petitioner on the basis that he included the 'missing' defendants in his EAC" is patently untrue.

IV. No matter how Respondents parse their words, no one can reasonably argue with the fact that the trial court's imposition of deadlines, that predated confirmation of the contents of the appellate opinion in the original appeal and the reinstatement of the "missing" defendants in the remanded action, operated as a denial of Petitioner's equal protection rights and violated the intent of the *Felder* holding.

While Respondents glibly dance around the topic in their oppositions, they never directly address the constitutional and statutory ramifications of the state's imposition of deadlines that *predated* confirmation of the contents of the appellate opinion in the original appeal and the reinstatement of the "missing" defendants in the remanded action.

V. Respondents cite cases that do not address District's all out attack on academic freedom.

On page 13 of their opposition, District Respondents cite cases that deal with factual issues that are tangential to the workings of an educational institution. None of these cases involved attacks on academic freedom.

District Respondents claim on pages 14-15 that Petitioner is giving greater import to his case than his case deserves. They insist Petitioner's lawsuit does not involve the marshaling of state resources to forcibly impose beliefs upon unwilling recipients. The facts, however, contradict Respondents' statements.

In response to Petitioner's efforts to address academic freedom issues, the District took extreme and severe measures including, but not limited to, canceling the visit of a team of outside educators invited by the District's Academic Senate to investigate abuses of academic freedom by the District, dissolving the District's Academic Senate, of which Petitioner was the remaining member after others were coerced into resigning, and banishing Petitioner from campus "because of the serious accusations contained in [Petitioner's] 'open letter' to the Board." Petitioner was physically escorted off campus and told that he would be subject to arrest if he set foot on District grounds. (Paragraphs 68 through 79 of Petitioner's 8th amended complaint.)

VI. The *Kirchmann* court admits that its decision falls well outside of the mainstream; moreover, on closer scrutiny, it is apparent that the *Kirchmann* court's premise is flawed.

California has waived the tort immunity of its school districts and explicitly permits them to be sued in state court on a tort claim whose source is a congressional enactment. (California Government Code §§815 and 811.8; Pet.App., pp. 155-156.) The *Kirchmann* Court attempted to get around the waiver granted under California Government Code §815, but its analysis is fraught with legal contradictions. (See Pet.App., p. 156.)

VII. The previous petition for a writ of certiorari was denied after this Court learned that the state appellate court had issued an opinion that appeared to be missing an entire section.

This Court could not address the previous petition properly because there were questions as to the completeness

of the appellate court's opinion; and the appellate court clarified matters far too belatedly.

CONCLUSION

The briefs submitted to this Court show that, while the appellate court in the original appeal executed its responsibilities dutifully, by contrast the appellate court in the appeal for which review is now being sought subjugated the Constitution, the teachings of this Court, and the notion of ordered government to the appellate court's own self interests---*i.e.*, the preservation of its image after it had mishandled the instant case, first in the issuance of an apparently incomplete opinion in the original appeal, followed by the debacle that emanated when, as a result of yet another error committed by the appellate court, the trial court on remand deemed some defendants to have been dismissed on appeal when, in fact, such was not the case. It was easier for the appellate court to lay blame at Petitioner's feet than to suffer embarrassment by acknowledging the true source of the problem.

This Court should review the within case to assure every future litigant that, no matter how embarrassing the error, no court will be permitted to place the preservation of its image ahead of the Constitution, the teachings of this Court, and the notion of ordered government.

ERRATUM

Petitioner acknowledges District Respondents' comment on page 14 of their opposition, regarding a statement made by Petitioner on page 24 of his petition; and so, Petitioner will restate the argument, proffered on page 24 of his petition, accordingly. In *Duke v. Grady Municipal Schools* (10th Cir. 1997), 127 F.3d 972 at 981, the court characterized the question of granting Eleventh Amendment

immunity to school districts as a "very confused area of the law." The instant case introduces even more complexity to this area of the law by and through its introduction of the academic freedom component to the debate. Thus, Petitioner argues, a clear and workable test is desperately needed in this area of the law, making it all the more important for this Court to address the question.

Respectfully submitted,

Anthony G. Vasek
Petitioner In Propria Persona